

July 6, 2006

Robert Sydney
General Counsel
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100 Cambridge Street, Suite 1020
Boston, MA 02114

Re: Initial Comments on the Proposed Guideline on the RPS Eligibility of Biomass Generating Units and on the Proposed Modifications to 225 CMR 14.00

Dear Mr. Sydney:

Thank you for the opportunity to comment on the Division of Energy Resources' (DOER or "the Division") recent Guideline on the RPS Eligibility of Biomass Generating Units ("the Guideline") and proposed modifications to the Renewable Energy Portfolio Standard 225 CMR 14.00.

The four signatories to these comments ("the Signatories") have great interest in ensuring both that the RPS program encourages the development of new renewable generation facilities and that Massachusetts consumers benefit from the associated increases in the amount of new renewable generation. To this end, the Signatories greatly appreciate and support DOER's apparent intent to clearly distinguish between a New Renewable Generation Unit and an RPS Qualified Generation Unit, where the latter includes facilities with a commercial operation date prior to 1998 that can qualify only under a Vintage Waiver. This clarity between new units and existing units is fundamental to the successful implementation of the RPS.

The Signatories are concerned, however, about certain of the proposed criteria applicable to both new and vintage facilities. DOER will be able to more efficiently and effectively manage generator applications and compliance if the proposed Guideline more clearly defines eligibility and compliance criteria in several specific areas. The Signatories respectfully requests DOER include several enhancements and clarifications as part of finalizing the proposed Guideline and modifications to 225 CMR 14.00. These initial comments address the following topics important to Massachusetts consumers:

- No additional existing generation should be declared as "new."
- DOER should utilize the emission limits proposed in July 1, 2005 DOER NOI, absent an acceptable specific rationale for a change. Emissions limits for toxic metals are especially important, given consideration of making C&D facilities eligible for the RPS.
- DOER should require that Eligible Biomass Fuel be harvested in a sustainable manner, and include an explanation thereof, in order to demonstrate adequately "low emissions" of carbon dioxide.
- DOER should clarify that facilities qualifying under the proposed emissions limits are grand-fathered against future, and more stringent, changes to these limits.

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- DOER should limit eligibility of stoker boilers to above vintage generation from existing facilities. Rather than utilize a heat rate standard, no new stoker boilers should qualify for the RPS.
- If DOER does retain a heat rate standard, the calculation and monitoring of net heat rate targets must be clarified.
- Eligibility of clean C&D wood must be accompanied by minimum sorting requirements.
- Emissions limits for generators other than solid fueled boilers should be included.
- The clarification that a pre-1998 unit that did not previously utilize eligible fuel may qualify is imprecise and requires additional explanation.
- DOER should clarify the eligibility of imports from other regions, so long as they can be accounted for by NEPOOL GIS and involve delivery of energy to NEPOOL

In addition to these essential topics concerning biomass generating units, the Signatories have included in a later section of these remarks several comments on DOER's responsibility to establish annual RPS increases beginning in 2010, and other means the Division could employ to encourage the development of new renewable generating facilities.

No additional existing generation should be declared as “new.”

The Massachusetts Renewable Portfolio Standard requires the provision of a defined amount of “new” renewable generation in each annual compliance period. A “new” generator is unambiguously defined as having a commercial operation date after December 31, 1997. As a result, any generating unit with a commercial operation date on or before December 31, 1997 is de facto an existing facility and should not be proclaimed “new” on any legitimate basis, irrespective of whether it has been retrofitted or retooled to meet other RPS requirements (including advanced conversion technology and emissions limits). Facilities with commercial operation dates prior to January 1, 1998 must only be eligible for above vintage generation. No existing generation should be deemed “new” based on even the most extensive retrofitting or retooling. The addition of a category for “Retrofitted Units” that are considered “new” is contrary to the RPS legislation. The Signatories respectfully submit that DOER should either remove the term Retrofitted Biomass Generating Unit or make its definition and eligibility parallel to a Vintage Generation Unit.

DOER should utilize the emission limits proposed in July 1, 2005 DOER NOI, absent an acceptable specific rationale for a change.

The 2005 Notice of Inquiry included “Permitted Emissions Limitations” for **SO₂, NO_x, Ammonia, CO, PM₁₀, VOC and Toxics**, as well as the annual **Metals** testing particularly critical for facilities burning construction and demolition debris. The 2006 Guideline proposes limitations for only NO_x and PM, and monitoring for CO. No rationale is provided for eliminating previously proposed categories of emission limits. The need for limits on toxics and metals is particularly important given the proposed use of clean C&D materials as fuel supply (addressed below). To the extent that the RPS

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program allows the use of clean C&D wood, the RPS program should also include strict limits on the emissions of air toxics and ensure these limits are complied with in order to maintain eligibility.

We understand that, for administrative simplicity, DOER may want to rely on emission limits established by the Massachusetts Department of Environmental Protection (MA DEP) as Best Available Control Technology (BACT) for new facilities. To the extent DOER takes this approach, it is critical that DOER adopt the MA DEP BACT standards for defining eligibility from biomass facilities in any state. Using the same emission standards for all facilities is important to establish a level playing field that discriminates neither for nor against facilities from Massachusetts. Establishing such a level playing field should not raise any U.S. Commerce Clause concerns.

The definition of Eligible Biomass Fuel should include the requirement that all biomass be harvested in a sustainable manner, and include an explanation thereof.

In order to be sure, however, that biomass generation is carbon-neutral, and thereby results in net low emissions of carbon dioxide, the definition of Eligible Biomass Fuel should include a sustainability requirement for biomass fuel. The Signatories propose that to qualify as Sustainable, biomass fuel must be derived from: (1) wood or wood waste (specifically limited to: (a) harvesting and mill residue; (b) precommercial forest thinnings; (c) slash; (d) brush; (e) stumps; (f) clean urban wood waste such as uncontaminated construction and demolition debris; and (g) landscape or right-of-way-tree trimmings), agricultural or food wastes, energy crops, biogas, biodiesel, organic refuse-derived fuel; that is available on a renewable or recurring basis, has been cultivated and harvested in a sustainable manner, and has been sorted to remove all non-qualifying fuels or wastes; or (2) methane gas from landfills. Sustainable Biomass does not include: (3) finished biomass products from sawmills, paper mills or stud mills, organic refuse fuel derived separately from municipal solid waste, or biomass from old growth timber stands. These classifications are drawn from RPS's in other northeast states.

The Signatories also propose that "biomass that is cultivated and harvested in a sustainable manner" should mean that forest-related resources originate from forests managed in accordance with the Forest Stewardship Council (FSC) criteria. The Division could also allow biomass generators to demonstrate an alternative measure of sustainable forest management: that the land from which the fuel is harvested is not converted into a use that sequesters less carbon than the land in its pre-harvested condition. Such practices should result in sustainable biomass fuel that, when consumed to generate electricity, generates virtually net zero carbon emissions.

DOER should clarify that facilities qualifying under the proposed emissions limits are grandfathered against future, and more stringent, changes to these limits.

The Signatories support the Division in its proposal that over time, revisions to the Guideline should be considered as lower emissions limits become commercially available

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and economically feasible. It is also of paramount importance, however, for the RPS program to create a clear, consistent and predictable framework on which investments in new renewable generation can be based. In order to invest in the Massachusetts RPS market, project sponsors must have the assurance that project requirements, limitations and economics are not subject to change post investment. Developers and investors measure the risk and opportunity cost of different development opportunities on a daily basis. The potential for a shift in emissions limits affecting already qualified facilities would have a dampening effect on new investment in Massachusetts and New England. For developers in the planning stages, the Division appropriately makes any changes in emissions limits effective no sooner than 24 months after they are issued. The Signatories concurs with this judgment.

Eligibility of pile burner and stoker boilers should be limited to above vintage generation from existing facilities. No new stoker boilers should qualify for the RPS.

In comments on the previous NOI, the Signatories stated that a heat rate definition for advanced conversion technology was unworkable. DOER's complicated and unclear proposed new guidelines for heat rate reinforce that conclusion. The Signatories reiterate their position in the 2005 NOI and remains strongly opposed to the inclusion of new facilities with pile burner and stoker combustion technologies. Until and unless DOER can demonstrate to all stakeholders that these technologies have equivalent or better operational and emission performance characteristics than the technologies currently allowed in new biomass facilities, the Signatories would continue to oppose new projects utilizing these technologies.

Using such a simple technology criterion would be far simpler and create far less market uncertainty than adopting a heat rate target and monitoring mechanism where the target is not even intended to be directly enforceable. At a minimum, however, if DOER does choose to adopt a heat rate criterion, the Signatories respectfully request that DOER clarify how this Primary Eligibility Criteria will be calculated and applied on both an initial and ongoing basis to adequately ensure the efficient operation of RPS qualified generating units.

Eligibility of C&D wood must be accompanied by minimum sorting requirements.

As stated in the UCS comments on the 2005 NOI, the Signatories believe that in the absence of the ability to aggressively recycle C&D debris and in the presence of a strong regulatory program, using clean C&D debris as an RPS-eligible fuel could be acceptable. However, allowing all – or poorly sorted C&D waste – is entirely unacceptable. The Signatories are seriously concerned that the language of the NOI referring to limitations on and monitoring of air toxics has been excluded from the proposed Guideline. In the 2005 NOI, DOER states that “Metals testing is required for facilities burning wood from construction and demolition debris, and possibly other biomass sources” (NOI at 11, footnote 33). The Signatories concur and request this requirement be reinstated.

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The Signatories believe it is important that state regulators strictly limit the potential air toxic impacts of biomass facilities using clean C&D debris as fuel. This is particularly important for out-of-state facilities that do not go through DEP for their operating and air permits. To make C&D for biomass plants acceptable, clean wood must first be separated from the C&D waste stream through proper adherence to handling, sorting, and separation requirements established by the DEP based on a pilot program as described below. This process is intended to remove all but de minimus levels of painted, treated, or pressurized wood, and wood contaminated with plastics and metals.

Unfortunately, our region lacks critical experience in efficiently and effectively sorting C&D material in a way that adequately and reliably protects the region's citizens from air toxics when these materials are burned to generate electricity. To this end, the Signatories proposes a Sort and Burn Pilot Program, and invites DOER to convene a stakeholder group to establish the guidelines, duration and other criteria for such a program. In principle, more detailed sorting is better than less detailed sorting. However, there is widespread skepticism that sorting has been done adequately in the past. Other states have attempted, or are actively attempting, to create effective sorting standards. There is an opportunity for Massachusetts to play a leadership role at this important waste management crossroads.

Emissions limits for generators other than solid fueled boilers should be addressed.

The Guideline is silent on emissions limits for generators other than wood-fired or other solid fuel-fired steam boilers. The Signatories respectfully recommend that other facilities, such as units using gasified or liquid biofuels, should be required to meet the same limitations on emissions in order to qualify and become RPS eligible.

Separate from the substantive proposals discussed above, the Signatories seek clarification on several important technical matters that are raised but not sufficiently addressed or concluded in the proposed Guideline.

The clarification that a pre-1998 unit that did not previously utilize eligible fuel may qualify is imprecise and requires additional explanation.

The Signatories interpret this proposed section to mean that a fossil fueled generator may execute a complete conversion to biomass (as distinctly separate from any co-firing application) and become eligible as a New Renewable Generation Unit. If this is the intent, the Signatories requests that DOER plainly state it in the Guideline. If this is not the intent, the Signatories reiterates its steadfast opinion that existing biomass generators must not be allowed to qualify as new simply by converting its fuel source and upgrading its emissions control technology. Any facility in operating prior to January 1, 1998 must in no case be allowed to qualify more than its above-vintage generation for the RPS program.

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DOER should clarify the eligibility of imports from other regions, so long as they can be accounted for by NEPOOL GIS and involve delivery of energy to

The proposed modifications to the import rules do not explicitly address generators located in other than adjacent control areas. This proposal conforms MA with NEPOOL GIS Operating Rules as well as CT and RI regulations. We understand that some parties interpret this rule as excluding imports from other control areas, even if they involve delivery of energy through an adjacent control area to NEPOOL. The Signatories encourages DOER to clarify its proposal on this issue, and to allow imports from other regions to be eligible, so long as the imports can be properly accounted for by the New England GIS and involve delivery of energy to NEPOOL.

In addition to these vital topics concerning biomass generating units, so long as DOER is for the first time since their initial establishment opening up the RPS rules for comment, there are two additional areas that the Signatories believe are important and appropriate to discuss at this time.

DOER should establish an annual RPS increase from 2010 to 2011, and allow the market to develop before levels of further increases are established.

DOER should establish a 1% increase in the minimum RPS requirement for the period of 1/1/2010 through 12/31/2011. Such an increase is more than justified based on past modifications to the RPS program which will introduce into the RPS supply a material amount of RECs from existing biomass facilities. Creating a policy, by 12/31/2007, for the entire 2010 to 2014 period may be premature based on current market information and not in the best interest of Massachusetts consumers. Even if the proposed Guideline is promulgated by Fall 2006, this leaves scarcely more than 12 months for the market to absorb and react to the new RPS guidelines, and for DOER to research and understand this market response before releasing a policy that would govern RPS increases for the entire 2010 to 2014 period. In this nascent market, DOER is advised to create a policy for the 2010 to 2011 period, and establish a date by which a policy will be announced for subsequent periods.

DOER should minimize changes to RPS eligibility, and focus on the long-term needs of renewable generators and Massachusetts consumers.

The Signatories recognize the current supply/demand imbalance of renewable energy certificates (RECs). While any number of proposed legislative changes could dramatically alter this picture, each fails to provide consumers with long-term RPS supply from new renewable generation. The Signatories request that DOER, DTE and the utilities address one of the root causes of the current shortage – the lack of long-term REC procurement. The current approach, relying exclusively on spot market and short-term procurement is unnecessarily costly to Massachusetts consumers. Long-term REC procurements by regulated utilities will provide immediate economic benefits to consumers in the short-term, REC price stability in the long-term, and sufficient market certain to attract investment dollars and lead to a more efficient RPS implementation.

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If you have any questions regarding any of these initial comments, please contact:

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Thank you for the opportunity to provide these initial comments; we look forward to the timely resolution of these issues and the promulgation of a final Guideline.

Sincerely,

/s/

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